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10/092,954	03/06/2002	David D. Konieczynski	022719-0023	7357
21125	7590	04/21/2006	EXAMINER	
NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			KENNEDY, SHARON E	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/092,954
Filing Date: March 06, 2002
Appellant(s): KONIECZNSKI ET AL.

MAILED
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GROUP 3700

William C. Geary, III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 29, 2006 appealing from the Office action mailed June 1, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner: The rejection of claims 1, 3, 10, 11, 15, 17 and 28-39 under 35 U.S.C. 102(b) as being anticipated by Lord et al., U.S. Patent No. 5,569,186; and the rejection of claims 7, 8, 14, 19, 20, 22 and 25 as being

obvious under 35 U.S.C. 103(a) in view of Lord et al., '186 in view of Santini et al., U.S. 5,797,898.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims. This section was copied from the Final Rejection mailed June 1, 2005.

Claim Rejections - 35 USC § 102

Claims 1, 3, 7-8, 10-11, 14-17, 19-20, 22, 25, 28-40 rejected under 35 U.S.C. 102(e) as being anticipated by Uhland, US 2004/0034332.

Uhland teaches an infusion pump including a fluid outlet; a fluid delivery pathway effective for extending from the fluid outlet to a discharge portion positionable at a target tissue site; and a controlled release drug assembly, the drug assembly being configured for controllably releasing drug material, and communicating with the fluid delivery pathway such that the drug material is released into the fluid delivery pathway, wherein

the pump assembly is effective to deliver a carrier fluid to the fluid outlet such that the drug material released into the fluid pathway discharges at the discharge portion to treat the target tissue site. Drug assembly is a microchip; the system also comprises of biosensors.

(10) Response to Argument

Appellant argues that Uhland does not adequately disclose the configuration of a microchip device with an implantable pump. The disclosure of the implantable system of Uhland is provided in paragraphs [0107 to 0108] of Uhland, entitled "Microchip Device with Implantable Pump." Uhland discloses that the micropump can "pump the carrier fluid across one or more surfaces of the microchip device." Note that Uhland's Figure 8A adequately shows how a flow system, albeit on a large scale, can be assembled to pump a carrier fluid across the surface of the microchip 112. The examiner takes the position that the Rosenberg reference is not even required to show how such a system could be operative. It is cited merely to exemplify that micropumps are known in the art.

Figure 8A of Uhland readily shows how any micropump can be used to assemble an apparatus implantable into the body. It is simply a matter of installing the controlled release drug assembly downstream from a pump. Note that gravity feed apparatus 102 can be replaced with a pump. See paragraph [0060]. Providing it on a micro-scale with a pump so that it can be implanted, or scaling it up to an IV system with a gravity feed

pump, is within the skill of the ordinary artisan and adequately disclosed by Uhland.

There is nothing unusual about the manner in which appellant's system is assembled.

Accordingly, the examiner takes the position that Uhland adequately discloses how to assemble an implantable system by explicitly stating that the micropump operates to cause carrier fluid to flow over the microchip, and in addition by showing the apparatus in Figure 8A. It is simply a matter of installing the controlled release drug assembly 108 downstream from the pump.

Appellant also argues that Uhland does not disclose delivery to a "target tissue." However, clearly the term "target tissue" is broad enough to include implanting the distal (outlet) end of the micropump in any area of the body.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Sharon Kennedy
Primary Examiner, AU 3767

Conferees:

Angela D. Sykes

Angela Sykes
Supervisory Examiner, AU 3762

m Hayes

Michael Hayes
Acting Supervisory Examiner, AU 3767